

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN GANAWAY, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 00-1362; Submitted on the Record;
Issued April 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof in establishing that he sustained an employment injury in the performance of duty

On December 3, 1997 appellant, then a 35-year-old temporary mailhandler, filed a traumatic injury claim alleging that, on November 19, 1997, he experienced pain in his back, right shoulder, arm and hand while performing his work duties. He also filed a notice of occupational disease alleging that he began to experience this pain after handling mail, lifting trays, containers, boxes, bags and flats, and moving equipment. Appellant stopped work on November 25, 1997 and returned on or about March 13, 1998.

In support of his claim, appellant submitted disability slips and a November 26, 1997 report from Dr. K.J. Schumacher, a radiologist, who stated that a magnetic resonance imaging (MRI) scan of appellant's cervical spine showed a moderately large disc herniation on the right at C6-7. He added that appellant complained of lower neck pain, which radiated to the right upper extremity and that he had symptoms since November 19, 1997, when he sustained a lifting injury.

In a letter dated December 17, 1997, the employing establishment challenged appellant's claim, noting that appellant worked full time as a state corrections officer and was a temporary employee working three to four hours a day, six days a week, for the employing establishment beginning September 27, 1997.

By letter dated January 16, 1998, the Office of Workers' Compensation Programs requested that appellant submit additional information regarding his activities outside of federal employment and previous orthopedic injuries.

In response, appellant indicated that the work activities that contributed to his condition were mainly pushing and pulling carts, filling bins and buggies with mail and handling numerous

large bags and boxes full of packages. He loaded and unloaded equipment from trailers on the dock, which required him to do a lot of pushing and pulling. Appellant stated that, while working on November 19, 1997, he experienced pain and numbness of the right arm and shoulder and tingling of the right hand.

The Office also received additional medical evidence. In an October 9, 1997 medical report, Dr. Joseph Wieck, an orthopedic surgeon indicated that appellant complained of two weeks of left shoulder pain which began at work, related to heavy lifting and pulling. Dr. Wieck diagnosed a rotator cuff strain. In a November 25, 1997 note, he reported that appellant had continual trouble with his right shoulder.

On December 2, 1997 Dr. Thomas O'Brien, an orthopedic surgeon, reported that beginning September 3, 1997, appellant complained of a kink in his neck and pain in the right trapezius and interscapular muscles, radiating down the right arm to the forearm and hand. Dr. O'Brien indicated that appellant had some weakness of the triceps, which affected his ability to sort mail at work and that he had a difficult time reaching and extending his right arm. Dr. O'Brien noted that appellant had no past history of similar complaints. He diagnosed large C6-7 disc herniation with C7 radiculopathy and recommended a cervical fusion.

In treatment notes dated January 5 through 7, 1998, Dr. O'Brien stated that appellant's symptoms first appeared on September 30, 1997 and that appellant had to stop work on December 10, 1997 due to disability.¹ He reported that appellant had undergone surgery on December 10, 1997, consisting of a C6-7 anterior cervical discectomy and fusion with instrumentation and fibular allograft. Dr. O'Brien added that appellant would be able to return to corrections work on February 5, 1998, but would not be able to return to his postal duties.

By decision dated February 18, 1998, the Office denied appellant's claim on the grounds that fact of injury had not been established.

In a letter dated February 26, 1998, appellant requested an oral hearing, which was held November 17, 1998. At the hearing, he testified that he had a previous back injury while employed with a private company in 1991 and had L3 surgery after he returned to full-duty communications work with the Tennessee Department of Corrections.

In a letter dated March 24, 1998, Dr. O'Brien related that appellant first noted neck pain on September 3, 1997 and later saw Dr. Wieck on October 9, 1997, who noted that appellant did heavy lifting and pulling at work. Dr. O'Brien stated that appellant was later diagnosed with C6-7 disc herniation. He concluded that activities of heavy lifting had been clearly shown to cause cervical disc herniations and, in his opinion, the work activities described in Dr. Wieck's October 1997 note were consistent with appellant's herniation injury.

Following the hearing, the Office received medical reports, including a December 31, 1993 report from Dr. Jerry Shipley, an attending physician who diagnosed a neck strain after appellant complained of neck pain, which he attributed to a previous MRI scan. In a July 27,

¹ The employing establishment terminated appellant on December 31, 1997.

1994 report, Dr. Mark Marsden, a specialist in emergency medicine, indicated that appellant had low back pain, which began when he lifted heavy objects at work and that his pain was similar to previous back pain. He added that appellant had a prior ruptured disc. Dr. Marsden diagnosed lumbar strain.

In a November 26, 1997 report, Dr. Richard Rubinowicz, a Board-certified neurologist, stated that appellant presented with radiating right arm numbness of several weeks' duration and that symptoms began when he started his new job with the employing establishment. Dr. Rubinowicz related that following some heavy lifting, appellant experienced discomfort in the right scapula region.

By decision dated January 28, 1999, the Office hearing representative affirmed the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an employment injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

In this case, the hearing representative found that appellant had not claimed a specific traumatic incident on November 19, 1997. Instead the hearing representative determined that appellant claimed employment factors of lifting 20 to 70 pounds approximately 4 hours per day from September through November and established the first component of fact of injury. However, the hearing representative found that appellant submitted no medical opinion specifically addressing whether this lifting caused or aggravated his claimed condition, especially in light of the fact that appellant had a prior back condition.

Although various physicians of record diagnosed C6-7 disc herniation, and generally concluded that appellant's condition was associated with work activities, none of the physicians provided a rationalized medical opinion, based upon reasonable medical certainty, that there was a causal connection between appellant's condition and any specific workplace factors.⁶

For example, Dr. O'Brien indicated that appellant's symptoms first appeared on September 30, 1997 and that appellant had to stop work to undergo surgery on December 10, 1997. He stated later that the work activities described in Dr. Wieck's October 1997 note were consistent with appellant's injury. Dr. O'Brien, however, did not provide medical reasoning explaining how appellant's job duties caused or aggravated a specific medical condition.⁷

Dr. Wieck discussed appellant's symptoms beginning September 29 and November 19, 1997, later diagnosed C6-7 disc herniation and listed work factors believed to have caused the condition. However he failed to provide any rationale linking appellant's medical condition with his employment. Dr. Rubinowicz stated that appellant's symptoms of radiating arm numbness and discomfort in his right scapular region began after starting his new job at the employing establishment, but he too failed to relate appellant's condition to employment factors.

Further, none of the physicians specifically addressed whether appellant's current symptoms may have been due to a prior condition. The medical record contains reports which indicate that appellant had a history of low back pain with lumbar discectomy after a ruptured lumbar disc. Appellant testified that he sustained a previous back injury while employed with a private company in 1991 and had L3 surgery. Further, Dr. O'Brien reported that, beginning September 3, 1997, appellant had a complaint of a kink in his neck and pain in the right trapezius and interscapular muscles radiating down the right arm to the forearm and hand. Appellant reported these symptoms, which are similar to those alleged in appellant's claim, prior to September 29, 1997, his first day of work with the employing establishment.

In this case, appellant has failed to submit rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified work factors. As such, appellant has failed to meet his burden of proof.

⁶ *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

⁷ *Id.*

The January 28, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member